



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

March 25, 2004

Ms. Angela M. DeLuca
Assistant City Attorney
City of College Station
P.O. Box 9960
College Station, Texas 77842

OR2004-2251

Dear Ms. DeLuca:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 198355.

The College Station Police Department (the "department") received a request for a police report that the requestor filed against a named individual in October, 2003. You inform us that the department has released some of the requested information. You also state that the department has withheld Texas driver's license information in accordance with Open Records Letter Nos. 2001-5574 (2001) and 2002-2022 (2002). *See* Gov't Code § 552.301(a); Open Records Decision No. 673 at 7-8 (2001) (listing criteria for second type of previous determination under Gov't Code § 552.301). You claim that the rest of the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and have reviewed the information you submitted.

Section 552.108(a)(2) excepts from required public disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]" A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information that the governmental body seeks to withhold. *See* Gov't Code § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986). Section

552.108(a)(2) is applicable only if the requested information relates to a concluded case that did not result in a conviction or a deferred adjudication. You inform us that the information at issue relates to an investigation that concluded without any criminal charges being filed and thus did not result in a conviction or a deferred adjudication. Based on your representations and our review of the submitted information, we conclude that section 552.108(a)(2) is applicable in this instance.

Section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” Gov’t Code § 552.108(c). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177, 186-87 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). See Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). The department must release basic information under section 552.108(c), including a detailed description of the offense, even if the information does not literally appear on the front page of an offense or arrest report. The department may withhold the rest of the requested information under section 552.108(a)(2). We note that the department has discretion under section 552.108 to release additional information that is not otherwise confidential by law. See Gov’t Code § 552.007; Open Records Decision No. 177 (1977) (statutory predecessor to Gov’t Code § 552.108 did not prohibit release of information). As section 552.108(a)(2) is dispositive, we do not address your other claim under section 552.108.

You also ask this office to issue a previous determination that would allow the department to withhold information relating to an investigation that did not result in a conviction or a deferred adjudication without the necessity of again requesting an attorney general decision under chapter 552 of the Government Code. See Gov’t Code § 552.301(a); Open Records Decision No. 673 (2001). We decline to do so at this time. This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

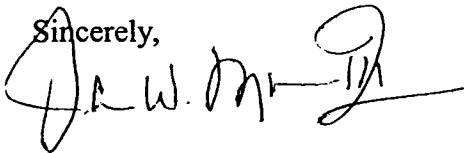
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "J.W. Morris III", written over a horizontal line.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 198355

Enc: Submitted documents

c: Ms. Rosa Esperanza Salazar
406 Brentwood
College Station, Texas 77840
(w/o enclosures)